IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7400 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI R BARODIA

Versus

DESK OFFICER

Appearance:

1. Special Civil Application No. 7400 of 2002

MR PH PATHAK for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr. P.H. Pathak for the petitioner and Mr. M.R. Shah, learned advocate for the

respondent.

Rule. Service of rule is waived by the learned advocate Mr. M.R. Shah on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the order at page 12 dated 11.3.2002 wherein the respondent no.1 has refused to refer the matter for adjudication in exercise of the powers under section 12(5) of the I.D. Act.

It was submitted by the learned advocate Mr. Pathak on behalf of the petitioner that the decision taken by the respondent no.1 not to refer the dispute for adjudication amounts to adjudication on merits of the matter. He also submitted that such powers have not been invested with the concerned authority and, therefore, the order dated 11.3.2002 passed by the respondent authority is required to be quashed and set aside by directing the respondent no.1 to reconsider the matter and pass appropriate orders in accordance with law within some reasonable period.

As against that, it was submitted by the learned advocate Mr. Shah on behalf of the respondent that it was within the power of the respondent under section 12(5) of the ID Act, 1947 to form prima facie opinion in respect of the subject matter. According to his submission, forming of such prima facie opinion under section 12(5) of the ID Act, 1947 shall not amount to adjudication of the matter on merits and, therefore, the petitioner is not entitled for any relief in this petition. He further submitted that the respondent No.2 who is an employer has also filed detailed reply on merits before the authority and according to his reply on merits also, the petitioner is not entitled for any relief and/or adjudication before the concerned court and, therefore, the authority was right in refusing to refer the matter for adjudication.

Considering the averments made by the petitioner in the memo of petition and also considering the submissions made by the learned advocates for the parties, according to my opinion, the reasons assigned by the respondent authority for not referring the matter for adjudication only on the ground that the workman is a casual labourer working through contractor for specific nature of work and on completion of such work, his service is coming to an end the claim of the workman is

frivolous, clearly amounts to adjudication on merits of the matter which is beyond the scope of section 12(5) of the I.D. Act, deciding lis between the parties. Therefore, I am of the opinion that on that ground alone, the order at page 12 dated 11.3.2002 Annexure B to the petition is required to be quashed and set aside by directing the respondent no.1 to reconsider the matter.

In the result, this petition is allowed. The order dated 11.3.2002 at page 12, Annexure B to this petition is hereby quashed and set aside and her respondent no.1 is directed to reconsider the matter a fresh in accordance with law without being influenced by his earlier order and to pass appropriate order in accordance with law within the period of three months from the date of receipt of copy of this order.

With these observations and directions, this petition is disposed of. Rule is made absolute.

Dt.29.4.2003. (H.K. Rathod,J.)

Vyas